

DEVIN DERHAM-BURK #104353
CHAPTER 13 STANDING TRUSTEE
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Trustee for Debtor(s)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA - DIVISION 5

In re:

DUMALANTA, DWAYNE PATRICK

)
)
) Chapter 13
) Case No. 14-53109 ASW

)
) **1ST AMENDED**
) **TRUSTEE'S OBJECTION TO**
) **CONFIRMATION WITH CERTIFICATE OF**
) **SERVICE**

)
) Confirmation Date: N/A – Trustee's Pending List

)
) Judge: Arthur S Weissbrodt
)

Debtor(s)

Devin Derham-Burk, Trustee in the above matter, objects to the Confirmation of this Pro Tanto%
Plan for the following reasons:

1. The debtor failed to use one of the two recommended plans for the San Jose Division.
An Amended Chapter 13 Plan must be filed and served on all creditors.
2. Debtor must file an Amended Voluntary Petition, Exhibit D, Disclosure of Compensation, Statement of Financial Affairs, and Creditor Matrix for the Northern District of California. The documents stated above were filed under the Central District of California.

- 1 3. The attachment to Schedule I listing Mr. Dumalanta's gross business income and
2 expenses has been omitted from the Voluntary Petition filed on July 17, 2014 [Docket
3 #1].
- 4 4. Business expenses have been deducted from gross receipts on the Chapter 13 Statement
5 of Current Monthly Income and Calculation of Commitment Period and Disposable
6 Income, filed on July 17, 2014 [Docket #1]. Pursuant to the 9th Circuit BAP case of *In re*
7 *Wiegand*, 2008 Bankr. LEXIS 1256 (BAP 9th Cir. Apr. 3, 2008), business expenses must
8 be deducted from current monthly income, not gross receipts. The Chapter 13 Statement
9 of Current Monthly Income and Calculation of Commitment Period and Disposable
10 Income must be amended to show a deduction for business expenses after Line 21 of the
11 Chapter 13 Statement of Current Monthly Income and Calculation of Commitment
12 Period and Disposable Income.
- 13 5. The Voluntary Petition filed on July 17, 2014 [Docket #1] is incomplete, in that, the
14 debtor has failed to list his prior bankruptcies. An Amended Voluntary Petition must be
15 filed and served on all creditors.
- 16 6. Pursuant to Schedule J, filed on July 17, 2014 [Docket #1], debtor is budgeting \$3,784.00
17 per month for the mortgage payment on the real property located at 3218 Flintmont Dr
18 San Jose, CA 95148. Line 47b of the Chapter 13 Statement of Current Monthly Income
19 and Calculation of Commitment Period and Disposable Income filed on July 17, 2014
20 [Docket #1] lists the average monthly mortgage payment for said real property as
21 \$1,892.00. The Trustee requests written clarification as to the accurate monthly
22 mortgage payment to OneWest Bank for the real property located at 3218 Flintmont Dr
23 San Jose, CA 95148.
- 24 7. Pursuant to Schedule J filed on July 17, 2014 [Docket #1], and Line 47a and Line 47c of
25 the Chapter 13 Statement of Current Monthly Income and Calculation of Commitment
26 Period and Disposable Income filed on July 17, 2014 [Docket #1], it appears the debtor
27 has failed to list the monthly mortgage payments to Ocwen account #xxx0772 and Real
28 Time Resolutions account #xxx2222 for the real property located at 2836 Ivy Estates Ct
San Jose, CA 95135. An Amended Schedule J must be filed.

- 1 8. Pursuant to the debtor's schedules, there is excess equity in the debtor's personal property
2 totaling \$650.00. In order to ensure compliance with 11 U.S.C. §1325(a)(4), the debtor
3 must amend the plan to state that, notwithstanding Section 2(d) general unsecured
4 creditors shall receive no less than \$650.00.
- 5 9. The debtor has not disclosed his 2013 and year-to-filing 2014 income in question 1 of the
6 Statement of Financial Affairs, and therefore, are not in compliance with 11 U.S.C.
7 §521(a)(1)(B)(iii). An Amended Statement of Financial Affairs must be filed.
- 8 10. Pursuant to Schedule I it appears the debtor has failed to list his property management
9 business in question #18 of the Statement of Financial Affairs. An Amended Statement
10 of Financial Affairs must be filed.
- 11 11. The Trustee is unable to determine if the plan is in compliance with 11 U.S.C.
12 §1325(a)(4). The Trustee has filed an Objection to Debtor's Claim of Exemptions which
13 must be resolved prior to the Trustee recommending confirmation.
- 14 12. The debtor has failed to appear and/or submit to examination under oath at the meeting of
15 creditors under 11 U.S.C. §341(a). Without conducting this examination, the Trustee is
16 unable to adequately investigate the debtor's financial affairs as she is required to do
17 pursuant to 11 U.S.C. §1302(b)(1) (incorporating 11 U.S.C. §704(a)(4)). In addition,
18 until the debtor is examined by the Trustee, she is unable to recommend confirmation of
19 the debtor's plan. The Trustee requests that the debtor appear at a rescheduled meeting of
20 creditors.
- 21 13. The debtor has failed to provide the Trustee with either or both 1)a government-issued
22 photo identification, or 2) proof of a social security number. *See* 11 U.S.C. §521(h).
23 Without being able to establish the identity of the debtor, the Trustee is unable to
24 adequately investigate the financial affairs of the debtor or recommend confirmation. The
25 Trustee requests that the debtor provide her with verification of both identity and social
26 security number.

27 Dated: September 10, 2014

/S/ Devin Derham-Burk

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Chapter 13 Trustee

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Said envelopes were addressed as follows:

LAW OFFICE OF TIMOTHY L
MCCANDLESS
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